

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1150

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To be argued by
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

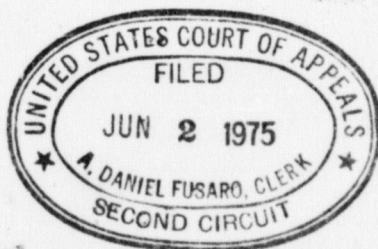
WILLIAM CAPO, HOWARD KAYE, JAMES
PARKER, and STUART STEINBERG,

Appellants.

Docket No. 75-1150

APPENDIX TO THE BRIEF
FOR APPELLANT WILLIAM CAPO

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



SHEILA GINSBERG,
Of Counsel.

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
WILLIAM CAPO
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET

JUDGE WARD
73 CRIM. 1095

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

STUART STEINBERG-1-4,7-12 & 14

John P. Cooney, Jr. AUSA

JOHN PERLMAN- 1

264-6348

JEFFREY PREISMAN-1,6

WILLIAM CAPO-1-4,9 & 10

MICHAEL DURST-1-4, 9 & 10

SUSAN WEINBLATT-1,13,14

For Defendant:

STEPHEN EFFRON-1,11,12

HOWARD KAYE-1,7

STANLEY NICASTRO-1,8

JAMES PARKER-1,5

JANE DOE, a/k/a "Sam"-1,5

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

(07)	ABSTRACT OF COSTS	AMOUNT	DATE	NAME	RECEIVED		DISBURSED	
	Fine,		2/20/75	Ellis	5	-		
	Clerk,		2/25/75	Treas			5	-
	Marshal, 253-6-9		3/25/75	Siegel	5	-		
	Attorney,		3/27/75	Treas.			5	-
XX	Commissioner's Court, 21							
XX	Witnesses 846,812,841(a)(1), (b)843(b)							
	Consp. to viol. Fed. Narcotic Laws. (Ct.1)							
	Distr. & possess. w/intent to distr. Phencyclidine III (2-4)							
	Use of telephone to facilitate consp. (Cts 5-14)							
	(Fourteen Counts)							

DATE

PROCEEDINGS

2-5-73	Filed indictment and ordered sealed. Bonsal, J. B/W ordered. Bonsal, J.
2-28-74	Indictment ordered unsealed. Brieant, J. (Assigned to Judge Tenney as superseding 73Cr1048) Steinberg (atty. present) Produced in Court on B/W Pleads not guilty. Motions returnable in 10 days. Bail fixed at \$250,000. unsecured P.R.B. co-signed by father. Bail limits to Wash. D.C. EDNY. Deft. to surrender passport to his atty, and call his atty. every Monday. Released in the custody of his atty. to post bond today. Pressman (atty. present) Produced in court on B/W Pleads not guilty. Motion returnable in 10 days. Bail fixed at \$25,000. unsecured P.R.B. co-signed by his mother. Released in custody of his atty. today to post bond. (ver)

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
2-28-74	Kave(atty. present) Produced in Court on B/W.) Pleads not guilty. Bail fixed at \$250,000. unsecured P.R.B. to be signed by his father and wife. Bail limits extended EDNY and Ft. Lee,N.J. Released to custody of atty. for today to post Bond. Ordered photo--graphed and fingerprinted. Deft. to call his atty. every Monday. Motions returnable in 10 days.				
	Parker (atty. present) Produced in Court on B/W) Pleads not guilty.Motions returnable in 10 days. Deft. remanded inlieu of bail fixed at \$10,000. unsecured P.R.B. to be co-signed by sister and brother-in -law.				
	Weinblatt(Produced in court on B/W) Bail fixed at \$35,000. unsecured P.R.B. unsecured to be signed by his father. Deft. released on his own recognizance to post Bond today. Pleading adjourned to 3/4/74. Brieant,J.				
2/28/74	Deft. Capo (Atty present) brought to court on b/w. Pleads not guilty. 10 days motion. Deft remanded in lieu of bail fixed at \$7,500. Deft. Effron (attys present) brought to court on b/w. Pleads not guilty. 10 days for motions. Deft remanded in lieu of bail fixed at \$20,000. unsecured P.R.B. co-signed by mother. Brieant,J.				
	Deft. Nicastro (atty present) brought to court on b/w. Pleads not guilty. Bail fixed at \$10,000. unsecured P.R.B. Deft. R.O.R. until he posts bail bond. 10 days for motions. Deft to be fingerprinted and photographed. Deft. Durst (no atty present) Remanded without bail. Deft to appear before Magistrate who will fix bail. Brieant,J.				
3/1/74	Deft Durst (atty present) pleads not guilty. 10 days for motions. Bail fixed at \$20,000. P.R.B. secured by \$2,000. to be co-signed by sister,father 7 mother. Condition of bail being deft reside with parents and call U.S. Atty every Monaday & Friday. Mother & father to sign bond & post money by 5 PM Monday 3/4/74. Deft discharged from custody of Marshal. Brieant,J.				
2/28/74	PARKER-filed P.R.B. in the sum of \$10,000.				
2/28/74	PRIESMAN-filed P.R.B. in the sum of \$25,000.				
2/28/74	STEINBERG-filed P.R.B. in the sum of \$250,000.				
2/28/74	KAYE-filed P.R.B. in the sum of \$250,000.				
2/28/74	WEINBLATT-filed P.R.B. in the sum of \$35,000.				
3/1/74	NICASTRO-filed P.R.B. in the sum of \$10,000.				
	-cont'd on next page-				

DATE	PROCEEDINGS
3/1/74	Deft Perlman (atty present) Bench warrant vacated. Pleads not guilty. Bail \$25,000. unsecured PRB, co-signed by sister. 10 days for motions. Brieant, J.
3/5/74	Steinberg (atty present) bail limits are extended to Wash D.C. for a period of 5 days with consent of the Govt. Tenney, J.
3/1/74	S. Effron- filed PRB in the sum of \$20,000.
3/4/74	M. DURST-filed PRB in the sgm of \$10,000. (appearance bond)
3/4/74	M. Durst-filed certificate of posting of bail.
3/6/74	S. Nicastro-filed affdvt of financial status.
3/7/74	S. STEINBERG-filed Govt's affdvt in opposition to deft's motions for bill of particulars, discovery & inspection, etc.
3/7/74	Filed ORDER that the bail limits of deft S. Effron be extended to include travel by the deft to San Juan Puerto Rico, for a period of approximately two weeks, etc. Tenney, J. mn
3/11/74	Filed deft S. Nicastro's motion for bill of particulars, etc.
3/11/74	Filed deft S. Nicastro's motion for discovery and inspection, etc.
3/11/74	Filed Govt's notice of readiness for trial.
3/15/74	Wm. Capo- filed remand dtd 2/28/74.
3/22/74	Stephen Effron- filed warrant for arrest of deft and marshal's return, deft produced on warrant. Remanded in lieu of bail Unsecured PRB \$20,000. Brieant, J. 2/28/74.
3/26/74	Filed ORDER that the scope of the bail of the deft James Parker is hereby expanded to permit the deft. to travel to and remain in Miami Beach, Fla, from March 28 to 4/2/74. Motley, J. mn
3/27/74	Filed warrmat for arrest of John Perlman and return, warrant vacated deft surrendered.
3/26/74	J. R. Perlman-filed CJA 23 financial affdvr.
3/28/74	J.R. Perlman-filed CJA form 20 appointment of counsel James Benard 150 Bway, NYC 10038 233-0260. mn Goettel, Magistrate
3/29/74	Filed ORDER that the bail limits of deft Stuart Steinberg, are ext. to include the Southern and Eastern Dists of N.Y. and the Dist. of Columbia for the purpose of visiting his child from 3/29/74 to 3/31/74, etc. Tenney, J. mn
4/2/74	S. WERMAN- (atty present) Deft. brought to court on warrant Pleads not guilty. Bail \$10,000 PRB unsecured Bail limits ext. to E.D.N.Y. and Newtonville Machigan. Deft to be fingerprinted and photographed. Tenney, J.
4/2/74	S. WERMANOfiled PRB in the sum of \$10,000.

DATE	PROCEEDINGS
4/10/74	
4/12/74	Filed ORDER that the bail conditions of deft Sara Suzanne Werman, are ext. for the period from 4/13/74 to 4/14/74 for the purpose of visiting the Brattleboro Retreat in Brattleboro, Vermont. Tenney, J. mn
4/10/74	S. Werman- filed remand dtd 4/2/74.
4/15/74	S. Nicastro-filed notice of appearance by atty Jerold Weissfeld, 160 B'way, NYC 10038 Ba 7-9826.
4/10/74	S. Werman (jane doe) filed warrant for arrest of deft. and marshal's ret: 4/2/74.
4/3/74	S. Werman- filed warrant for arrest of deft and marshal's ret. 2/28/74
3/2/74	Filed affdvt of Emanuel Growman re: substitution of atty.
4/30/74	Filed ORDER that the bail conditions on deft S. Werman, limiting her travel, be ext. to temporary residence in the Institute for Living, 400 Washington St, Hartford, Conn for the purpose of long term psycho-therapy. Tenney, J.
5/3/74	JOHN PERLMAN-filed magistrates orig. papers: (1) docket entry sheet (2) appearance bond.
5/3/74	Filed ORDER that the bail limits for deft H. Kaye are ext. to include Boston and Belmont, Massachusetts, etc. for psychiatric treatment deft may substitute a surety bond in the sum of \$50,000. or the cash equivalent thereof for the \$250,000. PRB filed herein on 2/28/74. Upon the filing of such surety bond or cash equivalent the said PRB shall be of no further effect and the guarantors thereof shall have no further liability thereunder. Tenney, J. mn
5/6/74	Filed Govt's notice of readiness for trial.
5/28/74	Filed pretrial motions of deft Howard Kaye.
5/28/74	Filed deft Howard Kaye's memo of law in support of pretrial motions.
5/28/74	Filed ORDER that the bail limits of deft S. Steinberg are ext. to include the Southern and Eastern Districts of New York and the District of Columbia for the purpose of visiting his child from 5/31/74 to 6/2/74 etc. Gurfein, J. mailed notice
7/3/74	Filed ORDER that the bail limits of deft S. Steinberg are extended to include Southern and Eastern Dists. of New York and Northern Dist. of N.Y. from 7/3/74 to 7/8/74, etc. Tenney, J. mn
3/25/74	Bench warrant vacated. Tenney, J.
7/13/74	Filed transcript of record of proceedings, dated 1/28/74.
6/26/74	M. Durst-filed CJA 20 approval for payment of Joseph Stone, Esq. mailed copies by CJA clerk.

Cont on Page 45

DATE	PROCEEDINGS	PAGE #5
8-27-74	Filed Order that deft. Stuart Steinberg bail bond be & are ext. to include the Southern & Eastern Dists of New York & Kent Falls, Connecticut & vicinity from 8-28-74 to & including Sept. 3, 1974. Tenney, J. (Consented to).	
8-21-74	Deft. Howard Kaye. Filed warrant for arrest with marshals return on 2-27-74.	
8-21-74	Deft. Stuart Steinberg. Filed warrant for arrest with marshals return, on 2-27-74.	
8-21-74	Deft. Jeffrey Priesman. Filed warrant for arrest with marshals return, on 2-27-74.	
8-21-74	Deft. James Parker. Filed warrant for arrest with marshals return, on 2-27-74.	
8-21-74	Deft. Michael Durst. Filed warrant for arrest with marshals return, on 2-28-74.	
8-21-74	Deft. Stanley Nicastro. Filed warrant for arrest with marshals return, on 2-28-74.	
9/23/74	Filed ORDER that the bail limits of deft Stuart Steinberg are extended to include the Southern and Eastern Districts of New York and the District of New Jersey, etc. Tenney, J. mn	
10/3/74	Filed ORDER that the bail limits of deft. S. Steinberg are extended to include the Southern and Eastern Districts of New York and the District of Columbia during the period from 10/2/74 to and including 11/1/74 and that except for the provisions of the foregoing paragraph, the deft. shall abide by with all terms of his bail bond, etc. Tenney, J. mn	
10/18/74	Filed ORDER that the bail conditions of deft. Werman are ext. to include travel to and from Newport, N.H. for the period from 10/18 to 10/20/74, etc. Tenney, J. mn	
10/22/74	Filed ORDER that the Court ordered, applications and related documents previously sealed by my order under the miscellaneous docket number 73 Cr. Misc. 1 M 19 97(35), be unsealed and docketed as part of the record in this action. Tenney, J.	
4/9/74	Govt.'s inventory. (previously filed under Misc. number)	
10/22/74	Filed Order that the inventory required by Title 18, U.S. Code, Section 2518 (8)(d) is hereby postponed for 60 days, etc. dtd 11/28/73-Stewart, J. (previously filed under Misc. number)	
10/22/74	Filed Order authorizing interception of wire communications, etc. and affdvt. Stewart, J. (previously filed under Misc. number)	
10/22/74	Filed Order that the inventory required by T. 18, U.S. Code, Sec 2518(8)(d) is hereby postponed for an additional 60 days. dated 1/28/74. Stewart, J. (previously filed under Misc. number)	

DATE	PROCEEDINGS
11/11/74	M. Durst & W. Capo--Filed papers origionally filed with Magistrate Rab (1) Docket Entry Sheets (2) (2) Criminal Complaint, S.D.N.Y. (3) Indictment Warrant, S.D.N.Y. (4) Disposition Sheet (5) Appointments of Counsel (6) Notices of Appearance (2) (7) Appearance Bond(s) (2) (8) Temporary Commitment(s) (2)
11-25-74	STUART STEINBERG-Filed CONSENT ORDER extending deft's. bail limits to include the Southern & Eastern Districts of New York and Las Vegas, Nevada (District of Nevada), for the period from 11-27-74 to 12-1-74, etc.....Ward,J.
11-25-74	SARA WERMAN-Filed CONSENT ORDER extending deft's. bail limits to include travel to and from Boston, Mass., Hartford, Conn., New York City and Woodstock Vermont for the period from 11-27-74 to 12-1-74.....Ward,J.
11-26-74	STANLEY NICASTRO-Filed affidavit & notice of motion of Jerold C. Weissfeld to be relieved as counsel for deft.,
12-6-74	STUART STEINBERG-Filed deft's. affidavit & notice of motion to suppress the contents of all intercepted communications & evidence derived therefrom, ret. 12-17-74.
12-6-74	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to suppress.
12-16-74	SARA WERMAN-Filed deft's. affirmation & notice of motion for disclosure, suppression discovery & inspection
12-16-74	JAMES PARKER-Filed deft's. affirmation & notice of motion for a bill of particulars, discovery & inspection, and disclosure, ret. 4-9-74.
12-16-74	SUSAN WEINBLATT-Filed deft's. affirmation & notice of motion for severance, suppression and discovery & inspection. (received in Chambers 3-14-74).
12-16-74	Filed Govt's. memorandum in opposition to motions by defts. Werman, Kaye, Weinblatt, Parker and Nicastro for discovery and bills of particulars.
12-17-74	STUART STEINBERG-Filed Govt's. affidavit in opposition to deft's. motion to suppress wiretap evidence.
12-17-74	STUART STEINBERG-Filed Govt's. memorandum in opposition to deft's. motion to suppress wiretap evidence.
12-17-74	Filed transcript of record of proceedings dated 10-18-74,
12-17-74	Filed transcript of record of proceedings dated 10-22-74.
12-17-74	STUART STEINBERG-Filed ORDER (consented to) extending deft's. bail limits to include the Southern & Eastern Districts of New York and North Miami Beach, Florida from 12-23-74 to and including 1-1-75, etc.....Ward,J.
	Cont'd on Page #7

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
12-19-74	HOWARD KAYE-Filed ORDER (consented to) extending deft's. bail limits, for the period from 1-3-75 to and including 1-21-75, to include the cities of Miami and Miami Beach, Florida, and the Southern and Eastern Districts of New York and Fort Lee, New Jersey. After 1-21-75, Bail limits shall be as provided in the order of this Court dated 2-28-74.....Ward,J.
12-19-74	Pre-trial conference held. Trial set for Jan.20,1975 at 10:00 A.M.....Ward,J.
12-20-74	STANLEY NICASTRO-Filed MEMO ENDORSED on motion of Jerold C. Weissfeld, dated 11-26-74. Motion granted. No opposition. Counsel is relieved and is granted leave to submit vouchers for services rendered to date. SO ORDERED.....Ward,J. (mailed notice)
12-20-74	HOWARD KAYE-Filed MEMO ENDORSED on deft's. motion filed 5-28-74. Motion for an order pursuant to 18 U.S.C. Sec. 4244 withdrawn without prejudice. The remaining motions are denied except as consented to by the Government. The particulars and materials are to be furnished to deft's. attorneys by 5:00 P.M. on 12-27-74 except as otherwise agreed to in open court. SO ORDERED.....Ward,J. (mailed notice)
12-20-74	JAMES PARKER-Filed MEMO ENDORSED on deft's. motion filed 12-16-74. Motion denied except as consented to by the Govt. The particulars and materials are to be furnished to deft's. attorneys by 5:00 P.M. on 12-27-74. SO ORDERED.....Ward,J. (mailed notice)
12-24-74	JAMES PARKER-Filed CONSENT ORDER extending deft's. bail limits, for the period from 12-23-74 to 12-30-74, to permit the deft. to travel to and remain in Miami,Florida.....Ward,J.
12-24-74	HOWARD KAYE-Filed ORDER (consented to) that deft. be examined as to his mental competency by Dr. Gurston Goldin, the cost to be borne by the U.S.A. and a copy of the report to be provided to deft's. counsel.....Ward,J.
12-27-74	JAMES PARKER-Filed Govt's. bill of particulars.
12-27-74	HOWARD KAYE-Filed Govt's. bill of particulars.
12-27-74	STUART STEINBERG-Filed Govt's. bill of particulars.
12-27-74	SARA-SUZANNE WERMAN-Filed Govt's. bill of particulars.
12-30-74	Deft. Weinblatt with attorney Louis R. Rosenthal present withdraws plea of not guilty & pleads guilty to Count 13. Pre-sentence investigation ordered. Sentence date 2-18-75 at 2:15 P.M. Bail of \$35,000 P.R.B. continued. R.O.R.....Ward,J.
12-30-74	Deft. Nicastro with attorney Louis R. Rosenblatt present withdraws plea of not guilty & pleads guilty to Count 8. Pre-sentence investigation ordered. Sentence date 2-18-75 at 2:15 P.M. Bail of \$10,000 unsecured P.R.B. Continued. R.O.R.Ward,J.
12-30-74	STUART STEINBERG-Filed MEMO ENDORSED on deft's. motion filed 12-6-74. Motion denied in accordance with memorandum decision filed herewith.....Ward,J. (mailed notice)
12-30-74	SARA-SUZANNE WERMAN-Filed deft's. memorandum of law in support of pre-trial motion for discovery.

DATE	PROCEEDINGS	Date Ord Judgment
12-30-74	SARA-SUZANNE WERMAN-Filed MEMO ENDORSED on deft's. motion filed 12-16-74. A. suppression hearing is granted. In all other respects the motion is denied except as consented to by the government. SO ORDERED.....Ward,J. (mailed notice)	
12-30-74	STUART STEINBERG-Filed MEMORANDUM ORDER. Deft. Steinberg's motion, joined by defendants, Perlman, Effron, Kaye & Parker to suppress the contents of all intercepted conversations and evidence derived therefrom is in all respects Denied. SO ORDERED.....Ward,J. (mailed notice)	
12-30-74	SUSAN WEINBLATT-Filed MEMO ENDORSED on deft's. motion filed 12-16-74. Motions withdrawn.....Ward,J.	
12-30-74	STANLEY NICASTRO-Filed MEMO ENDORSED on deft's. motion filed 3-11-74. Motion withdrawn.....Ward,J.	
12-30-74	STANLEY NICASTRO-Filed MEMO ENDORSED on deft's. motion for discovery & inspection filed 3-11-74. Motion withdrawn.....Ward,J.	
1-15-75	SARA-SUZANNE WERMAN-Filed 2nd MEMO ENDORSED on deft's. motion filed 12-16-74. Motion to suppress granted in accordance with oral decision rendered this date. SO ORDERED.....Ward,J.	
1-17-75	STUART STEINBERG-Filed deft's. notice of motion to dismiss Counts 1,7 thru 12 & 14 of the indictment, ret. 1-20-75.	
1-17-75	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to dismiss.	
1-17-75	HOWARD KAYE-Filed deft's. proposed examination of prospective jurors.	
1-16-75	STANLEY NICASTRO-Filed CJA Form 20 Copy 2 approving payment to Jacob Weissfeld, dated 12-27-74.....Ward,J.	
1-17-75	STUART STEINBERG-Filed deft's. notice of motion to dismiss Counts 1, 7 through 12, and 14 of the indictment ret. 1-20-75.	
1-17-75	STUART STEINBERG-Filed deft's. memorandum of law in support of motion to dismiss Counts 1, 7 through 12 and 14 of the indictment.	
1-20-75	STUART STEINBERG-Filed deft's. supplemental memorandum of law in support of motion to dismiss.	
1-20-75	STUART STEINBERG-Filed MEMO ENDORSED on deft's. motion to dismiss, ret. 1-20-75. Motion denied in accordance with oral decision rendered on this date. It is so ordered.....Ward,J.	
1-13-75	JEFFREY PREISMAN-(atty present) withdraws plea of not guilty & pleads guilty to ct. 6. P.S.I. ordered. Sentence date 2-18-75 at 2:30 p.m. Bail of \$25,000. unsecured P.R.B. co-signed by mother cont'd.....Ward, J.	
1-16-75	JOHN PERLMAN-(atty present) withdraws plea of not guilty & pleads guilty to ct.1. P.S.I. ordered. Sentence date 2-18-75. Bail Cont'd.....Ward, J.	
1-20-75	STEPHEN EFFRON-(atty present) withdraws plea of not guilty & pleads guilty to ct. 1. P.S.I. ordered. Sentence date 3-11-75 at 2:15 p.m. Bail \$20,000. unsecured P.R.B. cont'd.....Ward, J.	

Cont'd Page #9.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Jud
1-20-75	Trial severed as to Werman. Bail limits extended to Conn.	
1-20-75	Trial begins as to defts. Steinberg, Capo, Kaye and Parker.	
1-20-75	JAMES PARKER-Filed deft's requested voir dire questions of prospective jurors.	
1-20-75	STUART STEINBERG-Filed deft's questions to be asked of prospective jurors.	
1-24-75	HOWARD KAYE-Filed Govt's. memorandum of law with respect to deft's. psychiatric defense.	
1-21-75	Trial continues.	
1-22-75	Trial continues.	
1-23-75	Trial continues.	
1-24-75	Trial continues.	
1-27-75	Trial continues.	
1-28-75	Trial continues.	
1-29-75	Trial concluded. Jury deliberating. Deft. Steinberg-verdict guilty as charged. Bail continued. Pre-sentence investigation ordered. Sentence date 3-25-75 at 9:30 A.M. Deft. Capo-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 2-18-75 at 2:00 P.M. Remanded. Deft. Kaye-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 3-18-75 at 2:30 P.M. Bail continued. Deft. Parker-verdict guilty as charged. Pre-sentence investigation ordered. Sentence date 3-18-75 at 2:45 P.M. Bail continued,.....Ward,J.	
1-30-75	JAMES PARKER-Filed deft's. request to charge.	
1-30-75	HOWARD KAYE-Filed deft's. request to charge.	
1-30-75	STUART STEINBERG-Filed deft's. requests to charge.	
1-30-75	STUART STEINBERG-Filed deft's. supplemental requests to charge.	
1-30-75	Filed Govt's. request to charge.	
1-30-75	Filed Govt's. supplemental requests to charge.	
1-30-75	HOWARD KAYE-Filed deft's. memorandum in support of motion for a judgment of acquittal pursuant to Rule 29, R.R.Cr.P.	
2-18-75	JAMES PARKER-Filed deft's. affirmation & notice of motion for a Judgment of Acquittal setting aside the verdict of the jury or alternatively for a new trial.	
2-18-75	JAMES PARKER-Filed deft's. memorandum of law in support of motion for Judgment of Acquittal.	
2-18-75	SUSAN WEINBLATT-Filed JUDGMENT & ORDER OF PROBATION (atty present) Imposition of prison sentence is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. Counts 1 and 14 are dismissed on motion of deft's. counsel with consent of the Government.....Ward,J. Issued copies 2-18-75.	

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DATE	PROCEEDINGS	Date Ord Judgment
2-18-75	STANLEY NICASTRO-Filed JUDGMENT & ORDER OF PROBATION (atty present) Imposition of prison sentence is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this court. Count 1 is dismissed on motion of deft's. counsel with consent of the Government.....Ward,J. Issued copies 2-18-75.	
2-19-75	Filed transcript of record of proceedings dated December 19, 1974.	
2-24-75	Filed transcript of record of proceedings dated January 20,21,22,23,24,27,28,29,1975.	
2-24-75	Filed transcript of record of proceedings dated January 17, 1975.	
2-28-75	STUART STEINBERG-Filed affidavit & ORDER that deft's. bail limits are extended to include the Southern & Eastern Districts of N.Y. & the District of Columbia for the purpose of visiting his child from 3-2-75 to and including 3-4-75.....Ward,J.	
3-11-75	HOWARD KAYE-Filed deft's. pre-sentencing memorandum. JOHN PERLMAN	
3-11-75	Filed Judgment & Order of Probation. (# 75,220) (Atty. Present) Imposition of prison sentence on count 1 is suspended. The deft. is placed on probation for a period of Two (2) Years on condition deft. performs voluntary work on a regular basis to be arranged by the probation dept., subject to the standing probation order of this court. Deft. is Fined \$1,000.00 on count 1. Total Fine \$1,000.00 is to be paid during deft's period of probation in such amts. and at such times as may be determined by the probation officer. Ward J. Issued Commitment 3-12-75	
3-11-75	JEFFREY PRIESMAN Filed Judgment & Order of Probation. (# 75,219) (Atty. Present) Imposition of prison sentence on count 6 is suspended. The deft. is placed on probation for a period of Two (2) Years on condition deft. performs voluntary work on a regular basis to be arranged by the probation dept., subject to the standing probation order of this court. Deft. is Fined \$1,000.00 on count 6 Total Fine \$1,000.00 is to be paid during deft's period of probation in such amounts & at such times as may be determined by the probation officer. Count 1 is dismissed on motion of deft's. counsel with the consent of the Gov't. Ward J. Issued Commitment 3-12-75	
3-13-75	JAMES PARKER-Filed Govt's. memorandum in opposition to deft's. motions to dismiss and for a new trial.	
3-13-75	Filed transcript of record of proceedings dated January 14,15, 1975.	
3-19-75	JAMES PARKER-Filed MEMO ENDORSED on deft's. motion for a judgment of acquittal or for a new trial, filed 2-18-75. Motion denied in accordance with the oral decision of the Court. SO ORDEREDWard,J.	
3-17-75	WILLIAM CAPO-Filed Consent ORDER substituting Federal Defender Services Unit, Legal Aid Society, 15 Park Row, 10th Floor N.Y.C. 10038 (374-1737) as attorneys for deft.....Ward,J.	

(Continued)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Da Jud
3-18-75	<p>WILLIAM CAPO - Filed Judgment & Commitment (Atty. Present) The dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative pursuant to Sec. 4208(b) of T.18, U.S.C. for study, report & recommendation. This commitment deemed to be for the maximum sentence prescribed by law to wit: Five (5) Years each on cts. 1, 2, 3 & 4 to be followed by a Special Parole of Two (2) Years on each count. Four (4) Years each on counts 9 & 10. Sentences on counts 2, 3, 4, 9 & 10 are to run concurrently with sentence on count 1, unless altered pursuant to said Section upon the receipt & recommendation as prescribed in 4208(c) of T.18 U.S.C. The results of such study together with any recommendation which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of this case, shall be furnished to the court within three (3) Months. Special inquiry be made to ascertain basis for dft's seizures & also fully evaluate the psychological condition of said dft. Dft. to be given credit for time already served. Dft. has right to appeal in forma pauperis, Ward J. Issued Commitment 3-19-75</p>	
3-18-75	<p>JAMES PARKER - Filed Judgment & Order of Probation (Atty. Present) Imposition of prison sentence suspended on counts 1 & 5. Dft. is placed on probation for a period of Two (2) Years on each of counts 1 & 5 on condition that dft. perform voluntary work on a regular basis to be arranged by probation dept., subject to the standing probation order of this court. Probation on counts 1 and 5 to run concurrently. Ward J. Issued copies 3-19-75</p>	
3-18-75	<p>WILLIAM CAPO - Filed dft's. notice of appeal from the final judgment entered on 3-18-75 and MEMO ENDORSED. Leave to appeal in forma pauperis is granted. SO ORDERED.....Ward, J. (mailed copies to William Capo, 427 West Street, N.Y.C. 10014 and U.S. Attorney's Office.).</p>	
3-18-75	<p>HOWARD KAYE - Filed Judgment & Commitment # 75,245 (Atty. Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of Two (2) Months on count 1 to be followed by a Special Parole period of Three (3) Years & a fine of \$5,000.00; Two (2) Months on count 7 and a fine of \$5,000.00. Sentence & fine on count 7 to run concurrently with count 1. TOTAL FINE \$5,000.00. The dft. is ordered to stand committed until the fine of \$5,000.00 is paid or he is otherwise discharged by due course of law. The dft. is hereby directed to surrender himself to the Atty. Gen., by reporting to Allenwood Prison Camp, Montgomery, Pennsylvania, on the date which shall be fixed by the Bureau of Prisons. The Dft. shall be given at least five day's notice of this date. Ward J. Commitment Issued 3-20-75</p>	
3-20-75	<p>HOWARD KAYE - Filed dft's. notice of appeal from the judgment of conviction entered on 3-18-75. Mailed notice to Howard Kaye, 10 South Ridge Road, Larchmont, New York 10538 and U.S. Attorney's Office.</p>	
3-25-75	<p>JAMES PARKER - Filed dft's. notice of appeal from the judgment of conviction rendered on 3-18-75. (Copies mailed to James Parker, c/o Siegel & Graber, Esqs. 401 B'way. Suite 1808, N.Y.C. 10013 and U.S. Attorney's Office.).</p>	

-over-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

73 CRIM. 1095

STUART STEINBERG,
JOHN PERLMAN,
JEFFREY PRIESMAN,
WILLIAM CAPO,
MICHAEL DURST,
✓ SUSAN WEINBLATT,
STEPHEN EFFRON,
HOWARD KAYE,
STANLEY NICASTRO,
JAMES PARKER and
JANE DOE, a/k/a "Sam",

Defendants.

INDICTMENT

73 Cr.

The Grand Jury charges:

1. From on or about the 1st day of June, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, STUART STEINBERG, JOHN PERLMAN, JEFFREY PRIESMAN, WILLIAM CAPO, MICHAEL DURST, SUSAN WEINBLATT, STEPHEN EFFRON, HOWARD KAYE, STANLEY NICASTRO, JAMES PARKER and JANE DOE, a/k/a "Sam", the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(B) and 843(b) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic

drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

4. It was further part of said conspiracy that the defendants would unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about June 27, 1973, defendant WILLIAM CAPO delivered a package containing phencyclidine to defendant STUART STEINBERG, in the vicinity of 135 E. 35th Street, New York, New York.

2. On or about July 10, 1973, defendant STUART STEINBERG delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

3. On or about July 10, 1973, defendant MICHAEL DURST went to 135 East 35th Street, New York, New York.

4. On or about July 17, 1973, defendant STUART STEINBERG discussed the sale of ten pounds of phencyclidine for \$136,000.00.

5. On or about July 23, 1973, defendant JEFFREY PRIESMAN had a telephone conversation.

6. On or about July 26, 1973, defendants HOWARD KAYE and STUART STEINBERG discussed the sale of fifty pounds of either cocaine or phencyclidine for \$680,000.00.

7. On or about July 26, 1973, defendants STANLEY NICASTRO and STUART STEINBERG had a telephone conversation.

8. On or about July 26, 1973, defendants JAMES PARKER and JANE DOE, a/k/a "Sam" had a telephone conversation.

9. On or about August 26, 1973, defendants SUSAN WEINBLATT and STUART STEINBERG discussed the sale of ten pounds of hashish.

10. On or about August 8, 1973, defendant STEPHEN EFFRON offered to sell three pounds of cocaine to defendant STUART STEINBERG.

11. On or about August 23, 1973, defendant JOHN PERLMAN discussed the sale of fifty pounds of phencyclidine.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 26th day of June, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO, and MICHAEL DURST, the defendants, unlawfully, intentionally and knowingly did

distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately .21 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

THIRD COUNT

The Grand Jury further charges:

On or about the 27th day of June, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO and MICHAEL DURST, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 50.43 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

FOURTH COUNT

The Grand Jury further charges:

On or about the 10th day of July, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CAPO and MICHAEL DURST, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 222.8 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

FIFTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, JAMES PARKER and JANE DOE, a/k/a "Sam", the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SIXTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1973, in the Southern District of New York, JEFFREY PRIESMAN, the defendant, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STUART STEINBERG and HOWARD KAYE, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the

JPC:nc telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT EIGHT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STANLEY NICASTRO and STUART STEINBERG, the defendants, did unlawfully, wilfully, and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT NINE

The Grand Jury further charges:

On or about the 31st day of July, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT TEN

The Grand Jury further charges:

On or about the 6th day of August, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

JPC:bjt

COUNT FOURTEEN

The Grand Jury further charges:

On or about the 8th day of August, 1973, in the Southern District of New York, SUSAN WEINBLATT, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

Norman Resnick
FOREMAN

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

1 SLP

831

2 UNITED STATES OF AMERICA

3 versus

73 Crim 1095

4 STUART STEINBERG et al.,

5 Defendants

6
7 New York, N. Y.

8 January 29, 1975 - 9:30 a.m.

9 CHARGE OF THE COURT

10 THE COURT: (Ward, D. J.) It is the custom in
11 this Court for the juror seated in the first seat to serve
12 as the foreman or forelady of the jury. In this case, your
13 foreman will be Mr. John Gutierrez.

14 Mr. Foreman, ladies and gentlemen:

15 We come now to that stage of the case where you and
16 I do our part in the administration of justice in this case.

17 You are the sole and exclusive judges of the facts.
18 It is your function to pass upon the weight of the evidence;
19 you determine the credibility of the witnesses; you resolve
20 such conflicts as there may be in the evidence; and you draw
21 such reasonable inferences as may be warranted by the
22 testimony elicited on direct and cross-examination and the
23 exhibits in the case.

24 My function is to instruct you as to the law
25 applicable to the case. It is your duty to accept the law

2 as I give it to you in these instructions and to apply it to
3 the facts as you find them.

4 With respect to any fact matter, it is your recol-
5 lection and yours alone that governs. Anything that counsel,
6 either for the Government or the defendants, may have said in
7 respect to matters in evidence or as to any factual matter,
8 whether stated in a question, in argument or in summation, is
9 not to be substituted for your own independent recollection.

10 So, too, anything I may have said during the trial
11 or may refer to during the course of these instructions as to
12 any matter in evidence or as to any factual matter is not to
13 -e taken in lieu of your own recollection.

14 To repeat, it is your recollection, individually and
15 collectively, which governs.

16 From time to time, conferences at the bench were
17 conducted during the trial at the request of the attorneys or
18 at my request. These conferences were solely on questions
19 of law or logistics and are of no concern to you. You are not
20 to draw any inference for or against either side because of
21 a request for such conferences.

22 After you have retired to the jury room to deliber-
23 ate, should you require assistance with regard to testimony or
24 the law as I give it to you in this charge, you may request
25 that any portion of the testimony, including any portion of the

1 SLP 3
2 tapes or any portion of my charge be read back to you. You
3 will then be brought into the courtroom, and the portion of
4 the testimony or the portion of the charge which you request
5 will be read to you.

6 In the same vein, should you wish to see the indict-
7 ment or any exhibit which is in evidence, you may call for the
8 indictment or the exhibit, and it will be sent into the jury
9 room for you to see.

10 Each of the defendants has pleaded not guilty.
11 Therefore, the Government has the burden of proving the charges
12 against them beyond a reasonable doubt. It is a burden that
13 never shifts and remains upon the Government throughout the
14 entire trial.

15 A defendant does not have to prove his innocence.
16 He need not present any evidence, and he need not testify on
17 his own behalf. On the contrary, he is presumed to be innocent
18 of the charges contained in the indictment. The presumption of
19 innocence was in his favor at the start of the trial and con-
20 tinues in his favor throughout the trial. It is removed if
21 and when you are satisfied that the Government has sustained
22 its burden of proving the guilt of a particular defendant on
23 a particular charge beyond a reasonable doubt.

24 You will, as I will tell you later, consider each
25 defendant separately and each charge separately.

As I told you when you were being selected, an indictment is not evidence. It is a technique or method or procedure by which persons accused by a grand jury of crimes are brought into court and then their guilt or innocence is determined by a trial jury such as you are.

An indictment has no evidentiary value. An indictment does not constitute proof or evidence. It is merely an accusation.

The indictment in this case contains fourteen counts. Twelve of these counts will be presented to you for consideration. Each of these counts charges a separate offense or crime. Each must be considered separately.

The indictment names eleven defendants. However, only four -- Stuart Steinberg, William Capo, Howard Kaye and James Parker -- are on trial before you. These are the only persons whose guilt or innocence you must announce in your verdict, although, as I will explain to you shortly, in considering their guilt or innocence you may have to determine the nature of the participation, if any, of the other persons named in the indictment.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of each defendant on trial before you must be determined separately with respect to him, solely on the evidence

presented against him or the lack of evidence.

The case relative to each defendant stands upon the proof of the charge against him and not against somebody else. You will consider Stuart Steinberg separately; you will consider William Capo separately; you will consider Howard Kaye separately, and you will consider James Parker separately.

The charges in this indictment refer to the violation of Federal law, specifically Sections 812, 841, 843 and 846 of Title 21 of the United States Code.

In pertinent part, Section 841 provides:

"It shall be unlawful for any person knowingly and intentionally to distribute or possess with intent to distribute a controlled substance."

Section 812 sets forth and defines "controlled substances" in various schedules.

Section 846 makes it a crime to conspire to commit certain offenses, including the offense which I have defined a moment or two ago in Section 841.

Section 843 makes it a crime for anyone knowingly and intentionally to use any communication facility in committing or causing or facilitating the commission of any act or acts in violation of the laws to which I made reference a moment or two ago.

Turning now to the indictment, Count 1 reads as

follows:

"The grand jury charges:

"1. From on or about the 1st day of June 1972 and continuously thereafter, up to and including the date of the filing of this indictment" -- which I state to you was December 5, 1973 -- "in the Southern District of New York, Stuart Steinberg, John Perlman, Jeffrey Priesman, William Capo, Michael Durst, Susan Weinblatt, Stephen Effron, Howard Kaye, Stanley Nicastro, James Parker and Jane Doe, a/k/a 'Sam', the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown, in violation Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to

the grand jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:"

There follow eleven stated or alleged overt acts, which I will return to later in my charge; and, finally, at the bottom of the count, we have "(Title 21, United States Code, Section 846.)"

Following the conspiracy charged in Count 1, there are additional charges, which are called substantive counts. The conspiracy charge in Count 1 is entirely separate and distinct from the charges made in the substantive counts. This fact, however, does not prevent you from considering proof of actual violations as evidence that a conspiracy existed.

However, before you may convict any of the defendants under Count 1, all of the following essential elements must be established by the Government beyond a reasonable doubt:

First: you must be satisfied that the conspiracy charged did in fact exist; that is, that there was an agreement to deal in controlled substances and narcotic drug controlled substances, at or about the time alleged. Although the

indictment alleges a period from on or about the first day of June 1972 and up to and including the date of the filing of the indictment, which I told you was December 5, 1973, I think you will recall that the proof covered the period between June and September of 1973.

Second: that a particular defendant -- as I say, you must consider each defendant separately -- that a particular defendant knowingly and wilfully associated himself with the conspiracy; and

Third: that at least one of the overt acts set forth in the indictment did take place and that at least one of the overt acts took place in the Southern District of New York, which includes the Borough of Manhattan, in which this courthouse is located.

What is a conspiracy?

A conspiracy is a combination or agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal or unlawful by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what is alleged they conspired to do is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership

1 in criminal purposes, in which every member becomes the agent
2 of every other member. However, to establish a conspiracy,
3 the Government is not required to show that two or more per-
4 sons sat around a table and entered into a solemn contract,
5 orally or in writing, stating that they have formed a conspir-
6 acy to violate the law, setting forth details of the plan, the
7 means by which the unlawful project is to be carried out or
8 the part to be played by each conspirator.

9
10 Indeed, it would be extraordinary if there were
11 such a formal document or specific oral agreement. Your common
12 sense will tell you that when men in fact undertake to enter
13 into a criminal conspiracy, much is left to unexpressed under-
14 standing. Conspirators do not usually reduce their agreements
15 to writing or acknowledge them before a Notary Public, nor do
16 they publicly broadcast their plans.

17 From its very nature, a conspiracy is almost always
18 characterized by secrecy, thereby rendering detection difficult.

19 Thus, it is sufficient if two or more persons in any
20 manner, through any contrivance, impliedly or tacitly, come to
21 a common understanding to violate the law. Express language
22 or specific words are not required to indicate assent or
23 attachment to a conspiracy.

24 Let me emphasize to you that it is not required that
25 you find all eleven of the co-conspirators alleged in the

1 SLP 10
2 indictment were in fact members of the conspiracy in order to
3 find that a conspiracy existed. You need only find that two
4 or more persons, including any of these four defendants,
5 entered into an unlawful agreement in order to find that a
6 conspiracy existed.

7 In determining whether or not there has been an
8 unlawful agreement, you may judge acts and conduct of the al-
9 leged members of the conspiracy which are done to carry out an
10 apparent criminal purpose. The adage "Actions speak louder
11 than words" is applicable here. Usually, the only evidence
12 available is that of disconnected acts on the part of the al-
13 leged individual conspirators, which acts, however, when taken
14 together in connection with each other and with the reasonable
15 inferences flowing therefrom show a conspiracy or agreement
16 to secure a particular result as satisfactorily and conclusively
17 as more direct proof.

18 If, upon such consideration of all the evidence,
19 direct or circumstantial -- and I shall define those two terms
20 later in my charge -- you find beyond a reasonable doubt that
21 the minds of alleged conspirators, or at least two of them,
22 met in an understanding way and that they agreed, as I have
23 explained a conspiratorial agreement to you, to work together
24 in furtherance of the unlawful scheme alleged in the indictment
25 then the proof of the existence of the conspiracy is

established.

You have heard testimony that Bryan Noone and Arthur Anderson were acting as agents, and Ricky Citrola was an informant for the Drug Enforcement Administration, an agency of the United States Government, in their dealings with Mr. Steinberg and other alleged co-conspirators.

In determining whether Steinberg "conspired", as that term may be defined, you may not consider any agreements or understandings that Steinberg had, if any, with Noone, Anderson or Citrola. You must find beyond a reasonable doubt that Steinberg and the alleged co-conspirators conspired among themselves, separate and apart from any agreement Steinberg or anyone else may have had with Noone, Anderson or Citrola.

Accordingly, evidence, even if believed, that Steinberg agreed with Noone, Anderson or Citrola to distribute or possess with intent to distribute a substance is not proof that Steinberg conspired as charged in Count 1.

There must be proof beyond a reasonable doubt that Steinberg agreed with the alleged co-conspirators as distinguished from any agreement between Steinberg and Noone, Anderson or Citrola to distribute or possess with intent to distribute controlled substances and narcotic drug controlled substances.

It is not necessary for the Government to prove the

success of the conspiracy in order to establish a violation of a conspiracy statute. As a conspiracy is basically an agreement to violate the law, it may exist even though you find the objectives were never accomplished.

The indictment charges several illegal objects or goals of the conspiracy. These illegal objects were the sale of Schedule I controlled substances, in this case hashish and hashish oil; the sale of Schedule II narcotic drug controlled substances, in this case cocaine; and the sale of Schedule III controlled substances, in this case PCP, Seconal and Tuinal.

It is not necessary that the Government prove that these defendants agreed to distribute all of those substances. It is sufficient for the purpose of establishing whether or not a conspiracy as charged in the indictment existed if you find beyond a reasonable doubt an agreement between two or more persons, including any of these four defendants, to distribute any of those substances.

I caution you that the indictment charges, and the Government must prove, the existence of one conspiracy, not more, but I instruct you that a single conspiracy may have more than one illegal purpose, and a defendant need not participate in all of the illegal purposes of a conspiracy in order to be found guilty, so long as he is found by you to be a member of the single conspiracy charged in the indictment and

not of some other conspiracy.

On the other hand, if you find that the Government failed to establish beyond a reasonable doubt the one overall agreement as charged among the defendant you are considering and the alleged co-conspirators, you must acquit that defendant of the conspiracy charge.

Similarly, if you find that the Government failed to show the existence of the one overall agreement charged beyond a reasonable doubt but, rather, a number of separate agreements among the alleged co-conspirators, then you must acquit the defendants of the conspiracy charge.

Once satisfied that the conspiracy charged existed and that, in fact, it was a single conspiracy, you must ask yourself who its members were.

In deciding whether or not a defendant was a member of a conspiracy, you must do so on the basis of that defendant's own statements, acts and conduct.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether or not the particular defendant participated in the conspiracy but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

The word "knowingly" as defined in the crimes

charged here means that the particular act was done voluntarily and purposely and not because of mistake or accident.

Knowledge may be proven by a defendant's conduct and by all the facts and circumstances surrounding the case. No person can intentionally avoid knowledge by closing his eyes to facts which should prompt him to investigate.

In determining whether a defendant acted knowingly and intentionally, it is relevant for you to consider his mental and physical condition during the period of time he is alleged to have committed the acts charged. If you find that a defendant was under the influence of drugs at the time of any acts or during any conversation, either in person or by telephone, you would be justified in concluding that there was a reasonable doubt as to whether the defendant acted or spoke intentionally, at least on that occasion.

The word "wilfully" is used in the crimes charged here and means that the act was committed by a defendant voluntarily, with knowledge that it was prohibited by law and with the purpose of violating the law and not by accident, mistake or in good faith.

Knowledge is a matter of inference from facts proved. It is not necessary that the particular defendant you are considering be fully informed as to the details of the scope of the conspiracy in order to justify any inference

2 of knowledge on his part. To have guilty knowledge, the de-
3 fendant need not know the full extent of the conspiracy and
4 all of its activities and actors.

5 Once you have found a conspiracy to have existed
6 and a defendant to have knowingly participated in it, the ex-
7 tent of his individual participation has no bearing on his
8 guilt or innocence. The guilt of a conspirator is not measur
9 by the extent or the duration of his participation. Even if
10 he participated in it to a degree more limited than that of
11 his co-conspirators, an individual defendant is equally cul-
12 pable so long as he was, in fact, a conspirator.

13 However, participation in a single isolated trans-
14 action is not sufficient to show membership in a continuing
15 conspiracy.

16 I want to caution you that mere innocent association
17 with one or more of the conspirators does not make one a membe
18 of the conspiracy; nor is knowledge without participation suf-
19 ficient. What is necessary is that a defendant participate
20 with knowledge of at least some of the purposes of the con-
21 spiracy and with intent to aid in the accomplishment of those
22 unlawful ends.

23 When people enter into a conspiracy to accomplish an
24 unlawful end, they become agents for one another in carrying
25 out the conspiracy. Hence, the acts or declarations of one in

the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find in accordance with these instructions that the alleged conspiracy existed and that some or all of the defendants participated in it, then acts done and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy may be considered against a defendant who you find was a member, even though such acts or declarations were made in the absence and without the knowledge of that defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance of it, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

As I have already mentioned, an essential element of the crime of conspiracy is that an overt act to effect the object of the conspiracy be committed by at least one of the co-conspirators.

An overt act is any step, action or conduct which is taken to achieve or further the objective of the conspiracy.

An overt act need be neither criminal nor the very crime which is the object of the conspiracy. Thus, in this case, the overt acts listed in the indictment are not necessarily, by themselves, criminal or illegal.

If you find that any of these acts were committed to further the unlawful enterprise, regardless of whether it was an act which by itself would be innocent, then the overt act requirement has been satisfied.

I indicated before when I was reading from Count 1 that it alleged certain overt acts. I will now turn back to Count 1 of the indictment and read the alleged overt acts:

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

"1. On or about June 27, 1973, defendant William Capo delivered a package containing phencyclidine to defendant Stuart Steinberg, in the vicinity of 135 East 35th Street, New York, New York."

I state to you as a matter of law that that location is within the Southern District of New York. Whether or not this happened is a matter for you to determine from the evidence before you.

"2. On or about July 10, 1973, defendant Stuart

Steinberg delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

"3. On or about July 10, 1973, defendant Michael Durst went to 135 East 35th Street, New York, New York.

"4. On or about July 17, 1973, defendant Stuart Steinberg discussed the sale of ten pounds of phencyclidine for \$136,000.

"5. On or about July 23, 1973, the defendant Jeffry Priesman had a telephone conversation.

"6. On or about July 26, 1973, defendants Howard Kaye and Stuart Steinberg discussed the sale of fifty pounds of either cocaine or phencyclidine for \$680,000.

"7. On or about July 26, 1973, defendants Stanley Nicastro and Stuart Steinberg had a telephone conversation.

"8. On or about July 26, 1973, defendants James Parker and Jane Doe, a/k/a 'Sam', had a telephone conversation.

"9. On or about August 26, 1973, defendants Susan Weinblatt and Stuart Steinberg discussed the sale of ten pounds of hashish.

"10. On or about August 8, 1973, defendant Stephen Effron offered to sell three pounds of cocaine to defendant Stuart Steinberg.

"11. On or about August 28, 1973, defendant John Perlman discussed the sale of fifty pounds of phencyclidine."

Now I have finished reading the alleged overt acts.

It is not necessary for the Government to prove that each member of the conspiracy committed or participated in the particular overt act, since the act of any one done in furtherance of the conspiracy becomes the act of all the other members.

Also, the Government is not required to prove each of the overt acts.

If you find that any one of the overt acts was done in the Southern District and that it was done in furtherance of the conspiracy charged, then this requirement has been satisfied.

While the indictment charges in Count 1 that the conspiracy began on or about the 1st day of June 1972 and continued to the date of the filing of the indictment, which, as I have indicated, was December 5, 1973, it is not essential that the Government prove that the conspiracy started and ended on or about those specific dates.

Indeed, in the present case, the Government's proof, as I recall, is that the conspiracy ended on or about August 24, 1973, and encompassed a period which ran from approximately June to September of 1973.

It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within th

period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

We turn now to the so-called substantive counts, Counts 2, 3 and 4, which I will discuss together, and Counts 5, 7 through 12 and 14.

Counts 2, 3 and 4 of the indictment charge the defendants Steinberg and Capo as follows:

"SECOND COUNT

"The Grand Jury further charges:

"On or about the 26th day of June 1973, in the Southern District of New York, Stuart, Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately .21 grams of phencyclidine hydrochloride.

"(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

"THIRD COUNT

"The Grand Jury further charges:

"On or about the 27th day of June 1973, in the Southern District of New York, Stuart Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approxi-

mately 50.43 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

"FOURTH COUNT

"The Grand Jury further charges:

"On or about the 10th day of July 1973, in the Southern District of New York, Stuart Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately 222.8 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)"

With regard to these so-called substantive counts of the indictment, Counts 2, 3 and 4, before you can find a defendant guilty of the crime charged, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:

First: that on or about the dates charged, the defendant either distributed or possessed with intent to distribute a controlled substance;

Second: that on each occasion the defendant named did so unlawfully, wilfully and knowingly, and

Third: that the controlled substance was phencyclidine

hydrochloride, which is sometimes called "PCP".

You will note that the first element of the offense is distributing or possessing with intent to distribute the particular substance.

At the outset, you will note that these terms are used in the alternative. Therefore, you may find that the first element is established if you are satisfied either that the defendant you are considering distributed or possessed with intent to distribute. You need not find that he did both.

What do these terms mean? The word "distribute" means the actual constructive or attempted transfer of the drug. That definition is contained in Title 21, United States Code, Section 812, subdivisions 8 and 11.

The word "possessed" has its common, everyday meaning, that is, to have something within your control.

The word "intent" refers to a person's state of mind. As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his acts.

Again, in determining whether the defendant Steinberg had the specific intent to distribute a controlled substance, you should consider his mental and physical condition at the time.

If because of Steinberg's own drug use and the

consequence effect of such drugs on his mental and emotional state, you find a reasonable doubt that he was capable of forming the specific intent to distribute a controlled substance at the time of the transaction, you must acquit him.

Putting all the words that I have mentioned together the term "possess with intent to distribute" can be fairly stated to mean to control an item with the state of mind or purpose of transferring that item.

As to the second element, the terms "unlawfully", "wilfully" and "knowingly", which I also defined before, mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he did it deliberately.

Of course, it is not necessary that the particular defendant you are considering knew that he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

As to the third element, the indictment charges that the controlled substance is phencyclidine. I instruct you as a matter of law that phencyclidine is a controlled substance. However, you must still find beyond a reasonable doubt that the substance in Government's Exhibits 4-B, 5-C and 7-C is phencyclidine or PCP.

On that subject, you have heard the testimony of Michael Tsouros, the chemist employed by the Drug Enforcement Administration.

Turning now to Counts 5, 7, 8 through 12 and 14:

These counts charge violations of Section 843(b) of Title 21, United States Code, which makes it a crime for anyone "knowingly and intentionally to use any communication facility in committing or in causing or in facilitating the commission of any act or acts" in violation of the laws which are set forth in this indictment.

In this case, it is charged that the defendants used the telephone in furtherance of the conspiracy charged in Count 1, an act in violation of the laws which are set forth in the indictment.

There are, as I have indicated, a number of counts here. I will read the first of them, Count 5, or the Fifth Count, and then, rather than continuously read them, I will summarize the other counts.

"FIFTH COUNT

"The Grand Jury further charges:

"On or about the 26th day of July 1973, in the Southern District of New York, James Parker and Jane Doe, a/k/a 'Sam', the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone,

in committing and in causing and facilitating the commission of the conspiracy set forth in Count 1 of this indictment. (Title 21, United States Code, Section 843(b).)"

The seventh count charges a telephone conversation on the same day, the 26th day of July, 1973, involving Stuart Steinberg and Howard Kaye.

The eighth count also alleges a telephone conversation on July 26, 1973, involving Stanley Nicastro and Stuart Steinberg.

Count 9 alleges a telephone conversation on or about July 31, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 10 alleges a telephone conversation on or about August 6, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 11 alleges a telephone conversation on or about August 6, 1973, involving Stuart Steinberg and Stephen Effron.

Count 12 alleges a telephone conversation on or about August 8, 1973, involving Stuart Steinberg and Stephen Effron.

Count 14 alleges a telephone conversation on or about August 8, 1973, involving Susan Weinblatt and Stuart Steinberg.

In order to convict any defendants on these counts, you must find each of the following elements beyond a reasonable doubt: --

I would suggest, on the counts which go from Counts 5 through 14, although there is no Count 6, and there is no Count 13, Mr. Steinberg is named in Counts 7 through 12 and 14; Mr. Capo is named in Counts 9 and 10; Mr. Kaye is named in Count 7, and Mr. Parker is named in Count 5.

In order to convict any defendant on these counts, you must find each of the following elements beyond a reasonable doubt:

1. That the conspiracy charged in Count 1 existed.
2. That on or about the date charged the defendant or defendants knowingly or intentionally used the telephone.
3. That this use of the telephone was for the purpose of furthering the conspiracy charged in Count 1.

You may consider evidence relating to a defendant's mental state at the time of the alleged commission of certain acts such as telephone conversations he may have engaged in, to determine whether he possessed the mental capacity and intent required to constitute a violation of the Federal narcotics laws.

The defendants Kaye and Steinberg contend that by virtue of mental disease or defect resulting at least in part

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2 from their use of drugs, they were not responsible for their
3 conduct at the times and places charged in the indictment.
4 They have offered evidence in support of this contention.

5 The Government has offered evidence in opposition
6 to it. The burden of proof is upon the Government to prove
7 beyond a reasonable doubt that each defendant was responsible
8 for his conduct during the period covered by the charges in the
9 indictment.

10 The law defines mental disease as defect for the
11 purpose of responsibility for criminal conduct as follows:

12 "A person is not responsible for criminal conduct
13 if at the time of such conduct as a result of mental
14 disease or defect he lacks substantial capacity either to
15 appreciate the wrongfulness of his conduct or to conform
16 his conduct to the requirements of law."

17 Under that definition, any lack of capacity must be
18 the result of mental disease or defect, including disease or
19 defect induced by the use of drugs and must be substantial.

20 The lack of capacity may be either to appreciate
21 one's wrongful conduct or to conform such conduct to the re-
22 quirements of law. The mere fact that a person repeatedly
23 engages in criminal conduct does not in and of itself justify
24 a finding that he or she is not responsible for his conduct.

25 You will recall that the defendants Kaye and

1 Steinberg called three doctors who have specialties in
2 psychiatry. They had the other specialties, but I mention
3 psychiatry at this time. You heard that testimony, and you
4 should consider that testimony on the issue of the respons-
5 ibility of the defendants Kaye and Steinberg for their con-
6 duct.
7

8 However, you are by no means limited in considering
9 this issue to the opinions of these doctors. You are en-
10 titled to take into account, and you should take into account,
11 any other evidence that you believe relates to that issue,
12 including the evidence which you have previously considered
13 on the issue of whether a particular defendant's conduct was
14 wilful.

15 The defendant Steinberg also contends that the
16 transactions in this case were induced by Government employees.
17 In short, he advances a defense which the law terms entrap-
18 ment or enticement.

19 Under this defense, if you find that no crime would
20 have occurred but for the conduct of Agents Noone and Anderson
21 or Ricky Citrola, you must acquit Steinberg of all charges.

22 Now, let us consider this defense. Law enforcement
23 officials, in their efforts to enforce the criminal laws and
24 to apprehend those engaged in criminal activities, may re-
25 sort to stratagems or deception and may also use informers.

Such methods are not in any way forbidden by law and are often necessary in the detection and prosecution of certain crimes.

Whether or not you personally agree with the policy of using such methods is not in issue and is not before you. The fact that Government officials or employees merely afford opportunities or facilities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment or enticement.

When, for example, the Government has reasonable grounds for believing that a person is engaged in the illicit sale of narcotics, it is not unlawful entrapment or enticement for a Government agent to pretend to be someone else and to offer, directly or through an informer or other decoy, to purchase narcotics from such suspected person.

However, in their efforts to enforce the laws, the Government officials or employees may not entrap an innocent person who, except for the Government's inducement would not engage in the criminal conduct charged.

Thus, if the criminal design originates with the Government officers or employees, and they implant in the mind of an otherwise innocent person the disposition to commit the crime charged and to induce its commission, the prosecution may not succeed.

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2 In short, entrapment or enticement occurs only when
3 the criminal conduct was the product of the creative activity
4 of law enforcement officials; that is, if they initiate,
5 incite, induce, persuade or lure an otherwise innocent per-
6 son to commit a crime or to engage in criminal conduct. And
7 if that occurs, the Government may not avail itself of the
8 fruits of those instigating activities.

9 Such conduct offends the public conscience, and so,
10 while the crime may have been committed, the Government is
11 barred from benefiting by the improper conduct of its own
12 officers or employees.

13 Here, Steinberg contends that he was free of any
14 criminal purpose to deal in drug transactions and that he
15 had no previous disposition, intent or purpose to engage in
16 such criminal activity but was induced to engage in the con-
17 duct charged against him by the creative activity of Govern-
18 ment officials or employees.

19 The Government denies this and contends that
20 Steinberg was merely afforded the opportunity on each occa-
21 sion to commit the offense and that he readily and willingly
22 responded thereto and engaged in the transaction which are
23 the subject of the indictment without inducement of any
24 kind.

25 In this case, Agent Noone is a Government agent or

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2 employee. If you find some evidence that a Government
3 agent, by initiating the illegal conduct, induced the defend-
4 ant to engage in such conduct, then the Government must prove
5 beyond a reasonable doubt that the inducement was not the
6 cause of the crime, that is, that the defendant was ready and
7 willing to commit the crime without any persuasion.

8 To sustain its burden of proof, the Governmen has
9 to satisfy you that, in fact, its agents have not seduced an
10 innocent person but that the inducement which brought about
11 the offense charged against Steinberg was but another instance
12 of the kind of conduct which he was prepared to engage in if
13 given an opportunity.

14 Now, at the beginning I indicated that you are the
15 triers of the fact. You have to determine the truth, and
16 you have to appraise the credibility of the testimony and
17 of the witnesses in this case.

18 Now, how do you determine the truth and how do you
19 appraise the credibility of the witnesses who appeared here
20 and testified in this courtroom?

21 Well, you use your own plain, every day common
22 sense. You brought your common sense with you the first
23 day you stepped into this jury box. You have it with you
24 now. You will take it into the jury room, and I trust that
25 when you return ultimately from the jury room you will still

have it with you.

You have seen the witnesses; you have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you again apply your common sense in your everyday experience.

You may, of course, take into consideration the interest of a witness. For example, the narcotics agents might be said to have an interest in this case. It is a case which they investigated. An interested witness is not necessarily unworthy of belief. This is just one factor, however, which you should consider or may consider in determining the weight and credibility to be given to that witness' testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or your judgment.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe that any witness has been impeached

1 and thus discredited, it is your exclusive province to give
2 the testimony of that witness such weight and credibility,
3 if any, as you may think it deserves.
4

5 Because a particular witness may be a police
6 officer or another law enforcement officer such as an agent
7 of the Drug Enforcement Administration, that does not mean
8 that his testimony is deserving of any special consideration
9 or any greater or lesser weight by reason of that fact.

10 You take the witnesses as you find them; you watch
11 them as they testify and you determine based on your own com-
12 mon sense what the facts are.

13 You will recall that the defendants did not
14 testify. A defendant has the absolute right to remain silent
15 and you must not regard as prejudicial to a defendant the
16 fact that he did not take the stand. You must not draw a
17 presumption of guilt or any inference against a defendant
18 because he did not testify.

19 I said a while back that I would come back to
20 the matter of direct and circumstantial evidence. It is well
21 to explain now the difference between these two types of evi-
22 dence.

23 Direct evidence is where a witness testifies to
24 what he saw, heard or observed, what he knows of his own
25 knowledge, something which comes to him by virtue of his own

senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant you are considering.

Let us take one simple example, one which is offered in this Courthouse, to illustrate what is meant by circumstantial evidence. We will assume - although it was contrary to the fact this morning - that when you entered the Courthouse this morning the sun was shining brightly outside and it was a clear day, there was no rain, the sky was clear.

Now, assume that in this Courtroom the blinds are drawn and the drapes are closed so that you cannot look outside. Assume that you are sitting in this jury box and despite the fact that it was dry when you entered the building

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2 somebody walks in with an umbrella dripping water, followed
3 then in a short time by a man with a raincoat, and the rain-
4 coat is wet.

5 Taking our assumptions, you cannot look out the
6 Courtroom to see whether it is raining or not, and if you
7 are asked, is it raining, you cannot say you know it directly
8 of your own observation, but certainly upon the combination
9 of facts as I have given them, even though when you enter the
10 building it was not raining outside, it would be reasonable
11 and logical for you to conclude that it was raining now.

12 That is about all there is to circumstantial evi-
13 dence. You infer on the basis of reason and experience
14 from an established fact the existence of some further fact.

15 There are times when different inferences may be
16 drawn from facts, whether they are proved by direct or cir-
17 cumstantial evidence. The Government may ask you to draw one
18 set of inferences while the defendants may ask you to draw
19 another. It is for you to decide, and for you alone, what
20 inference you will draw.

21 Knowledge and intent, which I have mentioned be-
22 fore and tried to define for you, exist in the mind. Since
23 it is not possible to look into a man's mind to see what
24 went on, the only way you have for arriving at a decision is
25 these inferences.

It is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

On the question of knowledge and willfullness, you may also consider false statements as evidence of a defendant's guilty state of mind. If you find that a defendant when questioned by a law enforcement official made any deliberate false statement, you may consider such false statement as circumstantial evidence from which consciousness of guilt or criminal intent may be inferred. This is so because of the well established legal principle, that exculpatory statements made upon interrogation with intent to divert suspicion or mislead the investigator, when shown to be false, are circumstantial evidence of guilty consciousness and have independent probative force.

Again, whether or not evidence as to a defendant's explanation or statement points to a consciousness of guilt, and the significance, if any, to be attached to any such evidence, are matters for determination by you.

Certain alleged false statements by the defendant

Kaye have been testified to. This evidence may be considered as relevant evidence of whether the defendant Kaye acted knowingly and willfully in connection with the charges of conspiracy and unlawful use of a communication facility as alleged in this indictment.

Turning from the subject which I just discussed to one other subject. You have heard me mention at the beginning of the trial and during this charge reasonable doubt.

What is reasonable doubt? A reasonable doubt is such a doubt as would cause prudent men to hesitate to act in matters of importance to themselves. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience.

Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of each defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically

impossible for a person to be absolutely certain of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough that the defendant's guilt is established beyond a reasonable doubt, not beyond all doubt.

If, after a fair, impartial and careful consideration of all the evidence, you are convinced of the guilt of the defendant you are at that point considering, you must convict. If, on the other hand, after such a fair, impartial and careful consideration of all the evidence, you doubt the defendant's guilt, you must acquit him.

You are to decide the case upon the evidence and the evidence alone. You must not allow your personal feelings about the sexual activities, morals or the ways of life of the defendants to affect your decision, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

The defendants have each been charged with separate crimes in the 12 counts of the indictment which are being given to you. I have indicated that of the 14 counts originally, 12 will be submitted to you, Counts 1 through 5, 7 through 12 and 14. You recall from what I have told you

that different defendants are charged in different counts.

Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and on the evidence which applies to him as if he were being tried alone. When you deliberate, you shall give separate consideration and render separate verdicts with respect to each defendant and each count.

To assist you, and only to assist you in this, not to suggest anything one way or the other, Miss Kruger will hand your foreman a verdict form which sets forth the names of the defendants, the numbers of the counts on which they are charged, and then have a space for your foreman to work with as the jury deliberates. This is done merely to assist you and is not given to you to suggest anything.

If you find that a defendant is guilty beyond a reasonable doubt on any of the crimes charged in the indictment, a verdict of guilty as to that count should be returned as to him. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding any other defendant. You may find either one, two, three or all of the defendants guilty. You might find either one, two, three or all of the defendants not guilty. You will consider each defendant individually on each charge.

I will conclude with these few final remarks:

Under your oath as jurors you may not allow the consideration of punishment which might be inflicted upon a convicted defendant to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is solely to determine the guilt or innocence of each defendant upon the basis of the evidence and the law.

If you believe that some or all of the charges against a defendant have not been proven beyond a reasonable doubt, that defendant should be acquitted of those charges which the Government has not proved beyond a reasonable doubt. But, on the other hand, if you find that a charge has been proved beyond a reasonable doubt, you should not refuse because of sympathy or for any other reason to render a verdict of guilty.

There are 12 people on this jury. Any verdict must be the unanimous verdict of all of you. However, no one should enter upon the deliberation in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right. However, you are not to do violence to your own well founded opinion and common sense.

As I said a few moments ago, you will be taking your good common sense into the jury room. I expect that when

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2 you come out of the jury room your good common sense and
3 your good conscience will accompany you.

4 You are entitled, each of you, to your opinion.
5 In other words, each of you must decide the case for himself
6 or herself after thoroughly reviewing the evidence and ex-
7 changing views with your fellow jurors.

B9 8 After I have met with counsel at the side bar
9 Miss Kruger will give your foreman the verdict form to which
10 I made reference a few moments ago to assist you in reviewing
11 this case.

12 After you have exchanged your views in the jury
13 room, you should vote on each defendant and on each count
14 separately, and the vote will be kept by your foreman.

15 When you go into the jury room, ladies and gentle-
16 men, you will be placed in charge of the marshal. All commu-
17 nications with the Court after you are placed in charge of
18 the marshal will be by note given to the marshal. Your note
19 will then be delivered to me. I will then review what you
20 request with counsel, and, where proper, will try to oblige
21 you and respond to your requests.

22 It is now five minutes after eleven. As I say,
23 I am going to speak with counsel just a moment. In the mean-
24 time I would remind you that if you are deliberating during
25 the middle of the day, the so-called lunch hour, I will give

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2 you an option based on the weather. If you wish to order
3 sandwiches sent in, you may do so. I suggest if you do that,
4 you allow for perhaps an hour from the time you place your
5 order to the time the sandwiches are delivered. If you wish
6 to go out the marshal will take you out to a restaurant. So
7 I suggest that since we are close to the noon hour you might
8 consider which of those two options you wish to exercise.
9 Needless to say, your lunch will be paid for either way.

10 I suggest, finally, that this is an important
11 case to all concerned, and I want this jury to deliberate
12 with the idea in mind that you are under no pressure to act
13 or not act. Your first obligation is to review the evidence
14 in the case, to discuss it fully and thoroughly.

15 I will see to your convenience in every way
16 possible, so that I would ask that you put out of your mind
17 any feelings of pressure, because you are now about to en-
18 gage in one of the most important duties of citizenship.

19 Ladies and gentlemen, I have now completed my
20 charge. Before sending you to deliberate, I will see counsel at
21 the side bar. In the meantime I would ask Mrs. Satin to get
22 her coat from the jury room and to return to the Courtroom,
23 because after I send the jury in to deliberate, I should
24 like to speak with her. She is in the frustrating position
25 of having been our sole surviving alternate juror. She has

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873

2 sat through this case but will not be able to be present to
3 deliberate with you. So when I send her on her way I want
4 to thank her personally on behalf of all of us for the ser-
5 vice which she has rendered to this Court in the case here on
6 trial.

7 So, Mrs. Satin, if you will just step out, get
8 your belongings and return to your seat, I would appreciate
9 it.

10 I will see counsel at the side bar.

11 (At the side bar.)

12 THE COURT: I will ask first if there are any ex-
13 ceptions, and then I will ask if there are any supplementary
14 requests.

15 I will turn first to you, Mr. Mukasey.

16 MR. MUKASEY: Your Honor, only in the nature of
17 requests, I have two. First, that your Honor indicated in
18 discussing the conspiracy count, that a defendant quite
19 properly cannot be found guilty of conspiring with the
20 Government.

21 On the other hand, I would ask that your Honor
22 tell the jury that David Stolzenberg is a co-conspirator,
23 and there are others, but I think he is the only relevant
24 one who appears on the tapes who is not accounted for in the
25 indictment.

Request number two really concerns the aiding and abetting theory with regard to Counts 2, 3 and 4.

As I understand it, the Government is entitled, if the evidence warrants it, to an aiding and abetting charge with regard to a substantive count even though Title 18, Section 2, may not be set forth in the indictment. Title 18, Section 2 is not, in fact, set forth in the indictment, but I think the facts of the case warrant an aiding and abetting charge, and we would request it.

THE COURT: I will hear the other counsel on both of your requests and then I will hear them on any of theirs.

MR. ARKIN: With respect to Mr. Mukasey's first request, your Honor, I don't believe your Honor can properly charge Mr. Stolzenberg is a co-conspirator. I just don't think it is an appropriate request.

As far as the second request, it really does not affect my client. I believe that is one which Mr. Levison ought to speak to.

MR. LEVISON: In the indictment it charges that Durst, Steinberg and Capo did certain overt acts which would contravene the request that Mr. Mukasey wants as to that particular charge.

As I said the other day, I don't know how to handle a person's rights, where they are indicted, where the

alleged co-conspirator, the one who is deceased, and mentioned on the tape.

THE COURT: Do you object to my giving an aiding and abetting charge as a supplement to my charge?

MR. LEVISON: Is there any way that charge can be made showing that Durst--he mentioned Durst. Do you know what I mean by that? They are both connected.

THE COURT: Do you object?

MR. LEVISON: I object.

THE COURT: I considered this matter when I was reviewing the requests to charge, and for several reasons I determine not to charge aiding and abetting. It had been requested and was one which I had denied.

I am going to adhere to my prior ruling.

I think on your first request, Mr. Mukasey, it would be inappropriate for me to go further. If the jury should make a request later to know who or what Mr. Stolzenberg is, I can deal with it at that time after consulting with all of you. And therefore I will decline to supplement my charge relative to David Stolzenberg. I will also decline to charge aiding and abetting.

Now, I will hear from the defendants.

MR. LEVISON: You didn't mention Durst as to overt acts--

1
2 THE COURT: I have handled it to the extent that
3 I intend to.

4 MR. LEVISON: All right, that is an answer.

5 THE COURT: Let me ask first if you have anything
6 further. I will start with Mr. Arkin and then I will go to
7 Mr. Levison and then Mr. Ellis and then Mr. Siegel.

8 MR. ARKIN: As your Honor well knows, under the
9 Federal rules I have to repeat my exceptions to the requests
10 which were denied.

11 So we except to the failure to charge defendant
12 Steinberg's requests 3, 12A through C, 13, 14B, 16, 18B, 23,
13 24, 26, 26A, 28A, 28B, 28C, 31, 32, 35 through 40, 42 and
14 26B and C, and 39A and B.

15 Now first, if your Honor please, I would request
16 --this is in the event the jury calls for the indictment--I
17 would ask that the indictment be redacted first to remove
18 the paragraphs--

19 THE COURT: It has been. It is already re-
20 dacted.

21 MR. ARKIN: Also to remove reference to anybody
22 against whom there is no proof, as certain of the alleged
23 co-conspirators who have been cut lose from the case one
24 way or the other.

25 THE COURT: I will suggest that you look at the

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2 redacted indictment. It is not going to go in now. It is
3 only going to go in when requested, and then we can cover
4 that matter. I am not going to send it in with them now.

5 MR. ARKIN: Now, one of the principal exceptions
6 or objections I have to your Honor's charge in this respect
7 is that your Honor--

8 THE CLERK: One of the jurors is uncomfortable
9 and would like to be excused.

B10

10 (End of side bar discussion.)

11 THE COURT: I believe that one of the jurors
12 would like to step inside.

13 What I am going to do is, I am going to send you
14 all into the jury room with the strict instructions not to
15 begin your discussion of the case.

16 Mrs. Satin, if you are comfortable you can wait
17 here.

18 The jury is to go into the jury room with my
19 instructions not to begin deliberating in the case until
20 I have finished with counsel. You will be more comfortable
21 there for the next few minutes.

22 The jury is excused. Mrs. Satin, you will re-
23 main out here.

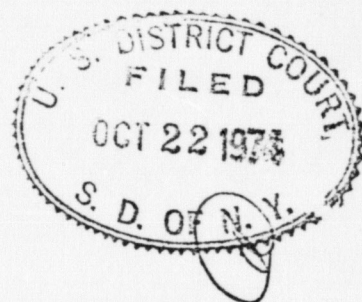
24 (The jury left the Courtroom.)
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

APPLICATION OF THE UNITED STATES
OF AMERICA IN THE MATTER OF AN
ORDER AUTHORIZING THE INTER-
CEPTION OF WIRE COMMUNICATIONS.

-----x



-----x

ORDER

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AUTHORIZING INTERCEPTION OF WIRE COMMUNICATIONS

TO: Special Agents of the Drug Enforcement Administration
United States Department of Justice

Application under oath having been made before me by the United States through its attorney John P. Cooney, Jr., as Assistant United States Attorney for the Southern District of New York, and an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an Order Authorizing the Interception of Wire Communications pursuant to Section 2518 of Title 18, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that Stuart L. Steinberg and others as yet unknown, have committed, and are committing, offenses involving illegal distributing, delivering, and possession with intent to distribute and otherwise illegal dealing in controlled substances, to-wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP"), controlled under Schedule III of 21 U.S.C. §12, in violation, respectively, of 21 U.S.C. 841(a); the use of communications facilities in committing or

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causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statute in violation of 21 U.S.C. 846.

(b) there is probable cause to believe that wire communications concerning the offenses described in paragraph (a) above, will be obtained through the interception; authorization for which is herein applied for. In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers, and others as yet unknown concerning:

- (1) The date, time, place and manner in which controlled substances in Schedule III will be illegally delivered to or by Stuart L. Steinberg.

- (2) The price Stuart L. Steinberg is to pay or receive for the controlled substances and the date, time, place and manner of payment for the drugs; and
- (3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and) degree of involvement of those persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) normal investigative procedures have been tried and failed and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.

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(d) there is probable cause to believe that the telephones listed and unlisted belonging to Stuart L. Steinberg located at 135 E. 35th, Apartment 2-R, New York, New York and carrying the telephone number 212-889-2606 and 212-889-2674 has been used, is being used, and will be used, in connection with the commission of the offenses described in paragraph (a), and is commonly used by Stuart L. Steinberg and others as yet unknown.

WHEREFORE, it is hereby ordered that:

Special Agents of the Drug Enforcement Administration, United States Department of Justice, are authorized pursuant to application authorized by the Attorney General of the United States, the Honorable Elliot Richardson, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code to:

- (1) intercept wire communications of Stuart L. Steinberg and others as yet unknown, concerning the above described offenses to and from the telephone listed in the name of Stuart L. Steinberg and located at 135 E. 35th Street, New York, New York and bearing the telephone numbers 212-889-2606 and 212-889-2674.
- (2) such interception shall not automatically terminate when the type of communications described above in paragraph (a) have first been obtained, but shall continue until

communications are intercepted which reveal the details of the scheme which has been used by Stuart L. Steinberg and others as yet unknown, to distribute, deliver and possess with the intent to distribute and otherwise illegally deal in narcotics and dangerous drugs, and the identity of their confederates, their places of operation, and the nature of the conspiracy involved therein or for a period of twenty (20) days from the date of this order, whichever is earlier.

IT IS FURTHER ORDERED, upon request of applicant, that the New York Telephone Company, a communications common carrier as defined in Section 2510(10) of Title 18, United States Code, shall forthwith furnish the applicant and the Drug Enforcement Administration all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted. The furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant or the Drug Enforcement Administration, United States Department of Justice, at the prevailing rates.

PROVIDING that this authorization to continue to intercept wire communications shall be executed as soon as practicable after the signing of this Order and shall be

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conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and shall terminate upon attainment of the authorized objective, or in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING ALSO that John P. Cooney, Jr., shall provide the Court with a report on the 5th, 10th and 15th days following the date of this Order showing what progress has been made toward achievement of the authorized objective and need for continued interception.

Charles E. Hawley
U. S. D. J.

Date: July 20, 1973

JPC:nc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
APPLICATION OF THE UNITED STATES
OF AMERICA IN THE MATTER OF ANY
ORDER AUTHORIZING THE
INTERCEPTION OF WIRE
COMMUNICATIONS.

APPLICATION

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN P. COONEY, Jr., as Assistant United States
Attorney for the Southern District of New York, being duly
sworn, states:

This sworn application is submitted in support of
an order authorizing the interception of wire communications.
This application has been submitted only after lengthy
discussion concerning the necessity for such an application
with various officials of the Drug Enforcement Administration
United States Department of Justice, Washington, D. C.,
together with agents of the Drug Enforcement Administration.

1. He is an "investigative or law enforcement officer -- of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, he is an attorney authorized bylaw to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable Elliot Richardson has authorized this application for an order authorizing the interception of wire communications.

of notification of approval from the Assistant Attorney General of the Criminal Division, the Honorable Henry E. Petersen and the memorandum of authorization approval by the Attorney General of the United States, the Honorable Elliot Richardson.

3. This application seeks authorization to intercept wire communications of Stuart L. Steinberg and others as yet unknown, and their suppliers and customers, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the illegal distribution, delivery and possession with the intent to distribute and otherwise illegal dealings in narcotics and dangerous drugs, to wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP") controlled under Schedule III of 21 U.S.C. 812 in violation of Section 841(a), of Title 21, United States Code; the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. 846, which have been committed and are being committed by Stuart L. Steinberg and others as yet unknown.

4. He has discussed all the circumstances of these offenses with Special Agent Brian J. Noone of the New York Office of the Drug Enforcement Administration who has conducted the investigation herein and has examined the affidavit of Special Agent Brian J. Noone (attached to this

application as Exhibit "B", and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe that Stuart L. Steinberg and others as yet unknown, have committed, and are committing, offenses involving illegal distributing, delivering, and possession with intent to distribute and otherwise illegal dealing in controlled substances, to wit: PCP, controlled under Schedule III of 21 U.S.C. 812, in violation, respectively, of 21 U.S.C. 841(a); the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statute in violation of 21 U.S.C. 846.

(b) there is probable cause to believe that wire communications concerning the offenses described in paragraph three (3), above, will be obtained through the interception, authorization for which is herein applied for. In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers and others as yet unknown concerning:

- (1) the date, time, place and manner in which controlled substances in Schedule III will be illegally delivered to or by Stuart L. Steinberg.
- (2) The price Stuart L. Steinberg is to pay or receive for the controlled substances and the date, time, place and manner of payment for the drugs; and

(3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and) degree of involvement of those persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) Normal investigative procedures have been tried and failed to and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.

(d) there is probable cause to believe that the telephone listed and unlisted in the name of Stuart L. Steinberg, located at 135 E. 35th Street, New York, New York and carrying the telephone number 212-889-2606 and 212-889-2674 has been used, is being used, and will be used, in connection with the commission of the offenses described in paragraph three (3), and is commonly used by Stuart L. Steinberg and others as yet unknown.

5. To my knowledge no other application for authorization to intercept, or for approval of interception of, wire or oral communications involving any of the same persons, facilities, or places specified in this application has been made to any judge by any agent of the United States Government in connection with the instant investigation.

WHEREFORE, your affiant believes that probably cause exists to believe that Stuart L. Steinberg and others

as yet unknown, are engaged in the commission of the above-described offenses, and that they have used, and are using, the telephone listed and unlisted in the name of Stuart L. Steinberg at 135 E. 35th Street, New York, New York and bearing the telephone number 212-889-2606 and 212-889-2674 in connection with the commission of those offenses, that communications concerning these offenses will be intercepted to and from that telephone, and that normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Brian Noone, attached hereto and made a part hereof as Exhibit "B" attached affiant herewith requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing the Drug Enforcement Administration of the United States Department of Justice to intercept wire communications to and from the above-described telephone until communications are intercepted which reveal the details of the scheme which has been used by Stuart L. Steinberg and others with intent to distribute and otherwise illegally deal in narcotics and dangerous drugs, and the identity of their confederates, their places of operation and the nature of the conspiracy involved therein, or for a period of twenty (20) days from the date of that order, whichever is earlier.

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It is further requested that this court issue an order pursuant to the power conferred on it by Section 2518(4)(e) of Title 18, United States Code, directing that the New York Telephone Company, a communication ~~common~~ carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant at the prevailing rates.

DATED:

UNITED STATES OF AMERICA

APPLICANT

BY

John P. Cooney Jr.
ASSISTANT U. S. ATTORNEY

AFFIANT

Sworn to before me this

18 day of July, 1973.

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 4137600
Qualified in Queens County
Comm. Exp. in New York County
Commission Expires March 31, 1975

20th of July 1973

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York



Office of the Attorney General
Washington, D. C. 20530

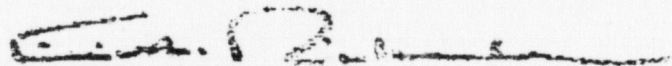
TEMPORARY SPECIAL DESIGNATION OF ASSISTANT ATTORNEY GENERAL
IN CHARGE OF THE TAX DIVISION
TO AUTHORIZE APPLICATIONS FOR COURT ORDERS AUTHORIZING
INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

Order No. 527-73

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 5 U.S.C. 301, and 18 U.S.C. 2516, I hereby specially designate the Assistant Attorney General in charge of the Tax Division to exercise the power conferred by Section 2516 of Title 18, United States Code, to authorize applications to a Federal judge of competent jurisdiction for orders authorizing the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which such application is made, when such interception may provide evidence of any of the offenses specified in Section 2516 of Title 18, United States Code.

The power delegated herein to the Assistant Attorney General in charge of the Tax Division shall be exercised by him only during the period from July 12, 1973 to July 22, 1973, inclusive, and shall expire at the end of the latter day.

July 11, 1973


Attorney General

TO : Henry E. Petersen
Assistant Attorney General
Criminal Division

DATE: JUL 20 1973


SPC:WER:TOL:eb

FROM : Scott P. Crampton
Assistant Attorney General
Tax Division

SUBJECT: Authorization for Interception Order Application

This is with regard to your recommendation that I authorize an application to a federal judge of competent jurisdiction for an order under Title 18, United States Code, Section 2518, authorizing the interception of wire communications for a twenty (20) day period to and from the telephone bearing the numbers 212-889-2606 and 212-889-2674, located at 135 East 35th Street, Apartment 2-R, New York, New York, in connection with an investigation into possible violations of Title 21, United States Code, Sections 841(a)(1), 843(b) and 846, by Stuart L. Steinberg and others as yet unknown.

By virtue of the authority vested in him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable Elliot L. Richardson, has by Order number 527-73, dated July 11, 1973, specially designated me to authorize applications for court orders authorizing the interception of wire or oral communications during the period from July 12, 1973 to July 22, 1973 inclusive. Accordingly, under the power delegated to me by the special designation of the Attorney General, I hereby authorize the above-described application to be made by any investigative or law enforcement officer of the United States as defined in Section 2510(7) of Title 18, United States Code.


SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division

July 20 1973
DATE

Department of Justice
Washington 20530

Mr. Paul J. Curran
United States Attorney
New York, New York

Dear Mr. Curran:

This is to advise that, pursuant to the power delegated to him by special designation of the Attorney General of the United States (by Order number 527-73, dated July 11, 1973), the Assistant Attorney General of the Tax Division has authorized an application to be made to a federal judge of competent jurisdiction for an order under Section 2518 of Title 18, United States Code, authorizing the interception of wire communications for a twenty (20) day period to and from the telephone bearing numbers 212-889-2606 and 212-889-2674, located at 135 East 35th Street, Apartment 2-R, New York, New York, in connection with the investigation into possible violations of Title 21, United States Code, Sections 841(a)(1), 843(b) and 846, by Stuart L. Steinberg and others as yet unknown. The memorandum of authorization approved by the Assistant Attorney General of the Tax Division is attached hereto.

Accordingly, you or any other attorney on your staff who is an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, are authorized to make the above described application.

Sincerely,

Henry E. Petersen
HENRY E. PETERSEN
Assistant Attorney General *Hm*

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

"EXHIBIT B"

-----x
: In the Matter :
:: of : AFFIDAVIT
:: An Application by the United :
: States of America for an Order :
: Authorizing the Interception of :
: Wire Communications Conducted :
: on New York City Telephone :
: #212-689-2606 and 889-2674 :
: -----xSTATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

BRIAN J. NOONE, Special Agent of the Drug
Enforcement Administration, United States Department
of Justice, being duly sworn, deposes and says:

1. I am an "investigative or law enforce-
ment officer...of the United States" within the meaning
of Section 2510(7) of Title 18, United States Code,
that is, an officer of the United States who is
empowered by law to conduct investigations of, and to
make arrests for, offenses enumerated in Section 2516
of Title 18, United States Code.

2. I make this affidavit in support of an application which seeks authorization to intercept wire communications to and from telephone numbers (212) 889-2606 listed in the name of Stuart L. Steinberg located at 135 E. 35th Street, Apartment 2-R, New York, New York and (212) 889-2674, an unlisted telephone number subscribed to by Stuart L. Steinberg at the same address concerning offenses involving violations of Sections 812, 841 and 846 of Title 21, United States Code, by Stuart L. Steinberg and other persons participating with him in said violations.

MC:ko

3. I have participated in the investigation of the offenses and as a result of my participation in the investigation and of reports made to me by agents with whom I have been working in the investigation, I am familiar with all circumstances of the offenses. On the basis of that familiarity, I allege the facts contained in the numbered paragraphs to show that:

(a) There is probable cause for belief that Stuart L. Steinberg, and other persons yet unknown, have been and are now committing offenses enumerated in section 841 (a) and section 846, Title 21, United States Code - that is, offenses involving the illegal distribution, delivery, possession with intent to distribute and otherwise illegal dealing in controlled substances, to wit: Phenycyclidine

Hydrochloride (hereinafter referred to as "bar") is controlled under schedule III of 21 U.S.C. 812, in violation of section 841 (a) of Title 21, United States Code; the use of communication facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843 (b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. 846, which have been committed and are now being committed by Stuart L. Steinberg, and others as yet unknown.

(b) There is probable cause for belief that particular communications regarding confederates and locations involved in the illegal trafficking of narcotics and dangerous drugs will be obtained through the interception of wire communications, the authorization of which is being hereby applied for;

(c) Normal investigative procedures reasonably appear unlikely to succeed, or are too dangerous to be used;

(d) There is probable cause for belief that a telephone bearing the number (212) 889-2606 and 889-2674 located at 135 E. 35th Street, New York, New York, has been and is being used to carry out the offenses referred to in paragraph 3(a) above, and is more fully set forth hereinafter.

4. On or about June 26, 1973, an informant of Drug Enforcement Administration introduced me to an individual initially identified only as "Stewie Crystal" at 135 E. 35th Street, at Apartment 2-R and on that date I received a free sample of 1.8 grams of "RUP" from "Stewie Crystal". On the same date, "Stewie Crystal" gave me the telephone numbers (212) 889-2606 and 889-2674 as the telephone numbers of his apartment where he could be contacted for future transactions. Through reference to the register of apartments at 135 E. 35th Street and through a check with the New York Telephone Security Office, it was determined that the telephone numbers (212) 889-2606 and 889-2674 and apartment 2-R at 135 E. 35th Street are registered to Stuart L. Steinberg.

5. On or about the evening of June 27, 1973, I telephoned Stuart L. Steinberg, using telephone number 889-2606, told Steinberg that I would come to Steinberg's apartment for the purpose of purchasing

two (2) ounces of PCP. When Steinberg agreed to this, I proceeded to abovementioned apartment and there purchased fifty-eight (58) grams of PCP for \$2400 from Stuart L. Steinberg.

6. On or about July 2, 1973, I telephoned Stuart L. Steinberg using the telephone number 889-2606 and stated that I and my "people" were pleased with the quality of the PCP purchased on June 27, 1973 and that I and my people might be interested in purchasing either one-half pound or one pound of PCP from Stuart L. Steinberg. Stuart L. Steinberg agreed to this proposition and Steinberg requested that I specify the exact weight so that Steinberg could, in turn, contact "his people" to make the quantity available. On July 3, 1973, I telephoned Steinberg using the telephone number 889-2606 and informed Steinberg that I had been unable to contact the principal for whom I was purchasing PCP and that further discussion of a second purchase of PCP from Steinberg should be put off until July 10, 1973. Steinberg acquiesced in this arrangement.

7. On or about the evening of July 10, 1973, I telephoned Steinberg using telephone number 889-2606 and informed Steinberg that I wished to come to Steinberg's apartment to discuss the quantity of the proposed second purchase of PCP from Steinberg. When Steinberg agreed to this, I went to Steinberg's apartment at 135 E. 35th Street and proposed to purchase

from Steinberg one-half pound of PCP for a price of \$8800. Steinberg agreed to this offer and immediately called "his people" so that the PCP would be delivered to Steinberg at his apartment for sale to me later that evening. During the course of his conversation, Steinberg informed "his people" that I would not be there when they arrived, and that he was aware that they did not want to meet me and that I did not wish to meet them. Later that evening, I returned to Steinberg's apartment accompanied by Special Agent Arthur Anderson who was acting in an undercover capacity and, who was introduced to Steinberg as the principal for whom I had been acting. At the apartment, Steinberg delivered the one-half pound of PCP to me in exchange for \$8800, as witnessed by Special Agent Anderson. At the same time, Steinberg and Special Agent Anderson and I discussed a third purchase of PCP which was to be in the amount of twenty (20) pounds. Steinberg instructed me to telephone him at 11:00 p.m. this same evening after he had had an opportunity to speak to "his people" about this proposed sale. Pursuant to this request, I telephoned Steinberg using telephone number 889-2606 at or about 11:00 p.m. at which time Steinberg stated that "his people" had just left his apartment and that they wanted to know the quantity of PCP which Special Agent Anderson and I wanted to purchase. Steinberg told me that "his people" could sell Special Agent

Anderson and I from twenty (20) to fifty (50) pounds of PCP if we had the cash to make such a purchase. I told Steinberg that we would purchase fifty (50) pounds of PCP and that cash represented no problem to us.

8. On various dates after this meeting, I telephoned Steinberg using 889-2606 to check on the status of the proposed third sale. On these occasions, Steinberg told me that he had not heard from "his people" and therefore, was unable to proceed with this proposed transaction.

9. On or about July 16, 1973, I telephoned Steinberg using 889-2674 and, after I inquired about the status of the proposed third purchase of PCP, Steinberg informed me that he and "his people" could sell me twenty (20) pounds of PCP, that the sale could be consummated on Monday, July 23, 1973, and that he would inform me of the details of the transaction at a later time.

10. From my experience, and knowledge of the facts developed in this investigation to date, it appears that Stuart L. Steinberg, and "his people" are engaged in major distributions of PCP. This conclusion is based on the deliveries of PCP made to me by Stuart L. Steinberg and the statements made to me by him that:

A. He could supply fifty (50) pounds of PCP to me.

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B. He could, over a period of time, supply an unlimited amount of PSP to me from an out of state laboratory; and the presence of drug distribution equipment in his apartment, including scales and weights, which I observed in my contacts with Steinberg.

11. Normal investigative procedures have not succeeded in establishing the full extent of the activities conducted by Stuart L. Steinberg related to the purchase or sale of controlled substances, nor have the location and identity of the source of Stuart L. Steinberg's supply been established. Normal investigative procedures reasonably appear to be unlikely to succeed in obtaining the evidence necessary for the following reasons:

A. At this time there is no known undercover access to his supplier and no chance of developing such access because of the covert manner in which Stuart L. Steinberg operates; and

B. My experience and the experience of other Special Agents of the Drug Enforcement Administration has shown that individuals dealing in large quantities of narcotics are particularly covert in their activities and wary of surveillance by Federal and State law enforcement personnel. Such dealers very rarely keep records, deal personally with a very few trusted individuals and isolate themselves from other individuals in the distribution organization.

12. In my opinion the intercepting of wire communications conducted by Stuart L. Steinberg

over the telephones having numbers (212) 889-2606 and 889-2674 in conjunction with substantial controlled "orders" of PCP will disclose sufficient information to determine those from whom Stuart L. Steinberg is obtaining his supply, and to whom he is selling PCP, as well as the times, dates, places, and manner in which deliveries are effected.

13. For the reasons set out above all normal avenues of investigation are closed and it is my belief that the only reasonable way to develop the necessary evidence of violations of Sections 812, 841 and 846 of Title 21, United States Code, by Stuart L. Steinberg and his confederates is to intercept wire communications to and from the telephones described in paragraph 3(d) above.

14. I have not, nor has any other agent of the United States Government to my knowledge, made any application to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in this affidavit.

WHEREFORE, your deponent respectfully requests this Court to issue an order pursuant to the power conferred on it by Title 18, United States Code, Section 2518, authorizing the Drug Enforcement Administration, Department of Justice, to intercept wire communications to and from (212) 889-2606

and 889-2674 located at 135 E. 35th Street, Apartment
2-R, New York, New York, for a period of 20 days
from the effective date of that order or until such
time as communications are intercepted which will:
(a) reveal the identity of person or persons from
whom Stuart L. Steinberg is illegally obtaining his
drugs; (b) reveal the identity of any person or
persons to whom he may be illegally selling drugs;
and (c) reveal any other information as to the
extent that Stuart L. Steinberg is involved in
trafficking in illicit narcotics and dangerous drugs
in violation of sections 812, 841 and 846 of Title
21, United States Code, and which reveal the
identities of his confederates, their places of
operation, and the nature of the conspiracy involved
therein.

Brian J. Nogue
BRIAN J. NOGUE
Special Agent
Drug Enforcement Administration

Sworn to before me

this 18 of July 1973

LYNWOOD HAYES
Notary Public, State of New York
No. 41-172325
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

Brian J. Nogue

*This 20th Day of July 1973
Lynwood Hayes*

that a
this day
action,
of this Court.

19

Yours, etc.,

United States Attorney
Attorney for -----

Attorney for -----

United States District Court

SOUTHERN DISTRICT OF NEW YORK

In the Matter
of

An Application by the United
States of America for an Order
Authorizing the Interception of
Wire Communications Conducted
on New York City Telephone
#217-889-2806 and 809-1874

AFFIDAVIT

the notice that the within -----
presented for settlement and sig-
the Honorable -----
District Judge, at the office of
Room 601, United States Court-
Square, Borough of Manhattan,
New York, on the ----- day of -----,
at 10:30 o'clock in the ----- noon
hereafter as counsel can be heard.

N. Y., -----, 19-----

Yours, etc.,

United States Attorney
Attorney for -----

Attorney for -----

PAUL J. CULLEN
TEL. 264-3311
United States Attorney
Attorney for -- U.S.A.

Due service of a copy of the within is here-
by admitted.

New York, -----, 19-----

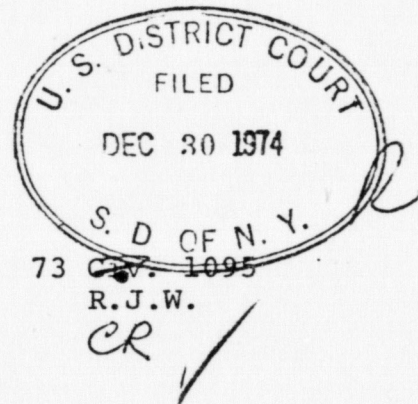
Attorney for -----

To

Attorney for -----

67
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,
Plaintiff,
-against-
STUART STEINBERG, et al.,
Defendants.
-----x



Defendant Stuart Steinberg moves, and defendants John Perlman, Stephen Effron, Howard Kaye and James Parker join, in a motion for an order pursuant to Rules 12(b) and 41(f), Fed. R. Crim. P., 18 U.S.C. §2518(10)(a), and the Fourth Amendment to the United States Constitution suppressing the contents of all intercepted conversations and evidence derived therefrom. For the reasons which follow, the motion is denied.

The evidence sought to be suppressed includes the contents of telephone conversations intercepted pursuant to orders of this Court dated July 20, 1973 and August 20, 1973, and all evidence derived therefrom, upon the grounds that the communications were unlawfully intercepted, the orders of authorization under which the communications were intercepted are insufficient on their face, and the interceptions were not made in conformity with the orders of authorization.

MICROFILM

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73

Steinberg argues that the issuance of the wiretap order of July 20, 1973 was unjustified and that the facts submitted to the judge to whom the application for an order was made were inadequate. Defendant argues that in violation of 18 U.S.C. §§2518(1)(c) and (3)(c), wiretapping was resorted to reflexively as the initial step in the government's investigation despite the availability and practicability of traditional investigative techniques. However, a review of the government's application belies this argument. The investigation had been in progress for almost a month, \$11,200 in government funds had been expended to purchase approximately three-quarters of a pound of phenycyclidine hydrochloride ("PCP"), a controlled substance, from Steinberg, and his source or sources of the controlled substance remained undisclosed. While defendant argues that traditional investigative techniques would have sufficed, the fact is that they had not up to that point. This Court finds that the application substantially complied with the statutory requirement and the issuance of the July 20, 1973 order was proper. See U.S. v. Falcone, 364 F. Supp. 877, 889-890 (D.N.J. 1973).

Steinberg next argues that continuation on the wiretap beyond the first interception was illegal since the original and renewal wiretap applications failed to specifical-

ly request that the authorization to intercept not automatically terminate upon the first interception of a communication of the type described in the application and failed to include a description of facts establishing probable cause to believe that more than one communication of the type described would occur.

Since the nature of the investigation was such as to embrace the conduct of multiple parties over a period of time, a continuation on the wiretap beyond the first interception was justified and met Fourth Amendment requirements. See U.S. v. Poeta, 455 F.2d 117, 120-121 (2d Cir. 1972).

In addition, Steinberg argues that the order of August 20, 1973 was unlawful in that there was no showing of probable cause as of the time it was issued. He argues that the information asserted as the predicate for probable cause on August 20, 1973 was stale in that all of the underlying facts had occurred on and before August 7. Inasmuch as Steinberg has not refuted the government's allegation that he was on vacation during most of the intervening 13 days, and since there is no indication that anything else had changed, this argument must fail.

Steinberg next argues that the alleged failure to seal the application to renew the initial wiretap order

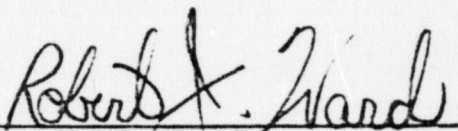
violates 18 U.S.C. §2518(8)(b) and that all communications intercepted pursuant to both orders must be suppressed.

Defendant misconceives the statutory purpose for sealing and offers no federal case support for his argument. Indeed, contrary authority is found in U.S. v. Cantor, 470 F.2d 890, 892-893 (3d Cir. 1972). Absent a showing of prejudice to any of the defendants, this branch of the motion must be denied.

Finally, defendant argues that a minimization hearing is required based on a comparison of the number of calls intercepted with the number of pertinent calls as set forth in the affidavit of Special Agent Frederic Boff, dated November 28, 1973. Defendant having made no prima facie showing based on the wiretap logs which have been made available to counsel, this branch of the motion must also be denied. Accordingly, the motion is in all respects denied.

It is so ordered.

Dated: December 27, 1974



U. S. D. J.



CERTIFICATE OF SERVICE

June 2, 1915

I certify that a copy of this brief and appendix for appellant William Capo has been mailed to each of the following:

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